

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Refinements to and Further Development of the
Commission's Resource Adequacy
Requirements Program.

Rulemaking 05-12-013
(Filed December 15, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING REVISED PROTECTIVE ORDER**

1. Summary

Respondents and other parties may file comments on the draft Revised Protective Order (RPO) attached to this ruling. Comments are due January 23, 2006.

2. Background

In a June 24, 2005 ruling in Rulemaking (R.) 04-04-003, respondent load-serving entities (LSEs) were directed to submit load forecasts and data to this Commission in connection with the resource adequacy requirements (RAR) program. In recognition of claims regarding the confidential nature of certain of these data, the ruling adopted an interim protective order (IPO).¹ It also

¹ The IPO was issued in R.04-04-003. Its scope is load forecasts and data submitted by respondents in furtherance of the RAR program. The order instituting R.05-12-013 provided that the new docket is the successor to R.04-04-003 as to RAR and that the record developed in that proceeding as to RAR is fully available in the new docket. Accordingly, this ruling is being processed in the new docket. Comments submitted in response to this ruling shall be filed in Rulemaking 05-12-013 only.

provided for a “meet and confer” process to develop a protective order that would generally provide for broader access to protected materials.²

On June 30, 2005, shortly after the IPO was issued, the Commission instituted a rulemaking (R.05-06-040) to implement Senate Bill (SB) 1488 (2004 Cal. Stats., Ch. 690). SB 1488 directs the Commission to examine its practices regarding confidential information to ensure meaningful public participation and open decisionmaking in its proceedings, while taking account of its statutory obligations to protect the confidentiality of certain information. In the first phase of R.05-06-040 the Commission is examining its confidentiality practices in the context of electricity procurement and other activities in R.04-04-003 and this proceeding.

By ruling dated July 14, 2005, Assistant Chief Administrative Law Judge Lynn Carew denied a motion by Constellation NewEnergy (CNE) to modify the IPO, declining to provide that future changes to the IPO will apply prospectively to subsequently submitted information. Among other things, the July 14 ruling noted that CNE and similarly situated parties had the opportunity to participate fully in the meet and confer process established in the June 24 ruling, and that they would have the protection of the “notice and opportunity to be heard” provisions of the IPO.

By ruling dated July 29, 2005, I adopted minor revisions to the interagency confidentiality agreement between the Commission and the California Energy Commission (CEC) that was attached to the IPO. On January 4, 2006 I issued a ruling determining that the IPO covers certain data submitted by LSEs in

² The IPO provides only this Commission, the CEC, other state agencies, and the California Independent System Operator (CAISO) with access to confidential information.

response to instructional guidance of the Energy Division related to RAR compliance filings.

Pursuant to the June 24 ruling, parties met and conferred during the summer of 2005. As a result of this process, on August 31, 2005 The Utility Reform Network (TURN), the Alliance for Retail Energy Markets (AReM), Southern California Edison Company (SCE), the Independent Energy Producers Association (IEP), and CNE (collectively, Moving Parties), submitted their Joint Motion to Adopt Revised Protective Order. The Moving Parties reported that the California Electricity Oversight Board supports the Joint Motion and that Sempra Global and San Diego Gas & Electric Company do not oppose the Joint Motion. No responses to the Joint Motion have been filed.

Decision (D.) 05-10-042 reaffirmed and clarified the RAR policy framework established in D.04-01-050 and D.04-10-035 and provided for implementation of the policy framework. The Commission stated the following regarding the confidentiality of LSEs' load data:

Confidentiality of LSE Load Data - Confidentiality issues for the first RAR cycle of LSE preliminary load data submittals were resolved with the issuance of the ALJ's Protective Order on June 24, 2005. [Footnote omitted.] Before we adopt specific confidentiality protocols for LSE load data for future years, we will complete our more generic review of confidentiality issues in R.05-06-040. Since that review may not be completed before the next RAR cycle's load data submittals are made next spring, we will provide that such submittals shall be subject to the ALJ's June 24, 2004 protective order or successor protective order. (D.05-10-042, p. 85.)

The Commission went on to state the following with respect to the confidentiality of LSEs' resource information:

Confidentiality Issues - The comments revealed a general consensus that LSE resource tabulations are considered as confidential as LSE load data or even more so. As we noted earlier in connection with

the confidentiality of LSE load data, the Commission is generically considering confidentiality protocols in R.05-05-040 [sic]. Pending the completion of that process, we will take a conservative approach to the treatment of LSE resource data by providing that such data shall remain confidential until further order. Subject to appropriate non-disclosure protocols, access to this confidential data shall be limited to this Commission, the CAISO, the CEC, and other government agencies to the extent required by law. In addition, non-market participants shall have access to this data to the same extent, if any, that non-market participants have access to historic and forecast load data pursuant to ALJ ruling in this or successor RAR proceeding. Since these data represent an important improvement in the quantity and quality of data about future load and resource balances, we will authorize public disclosure by the CEC of aggregations of these data in making overall control area and statewide assessments. (D.05-12-042, pp. 88-89.)

D.05-10-042 provides that “year-ahead” RAR compliance filings by LSEs are due on January 27, 2006 and that “month-ahead” compliance filings are due beginning May 1, 2006 for the June 2006 compliance period.

3. Discussion

The proposed RPO provides for broader access to protected materials than the IPO provides. Specifically, the RPO provides for TURN and other “non-market participants” to have the same access to protected materials as Commission staff and other “state reviewing representatives,” subject to the execution of a non-disclosure certificate. In addition, the RPO provides for all parties to have access to aggregated data from electric service providers. It expands the definition of “staff reviewing representatives” to include employees and consultants of other state agencies besides the Commission and the CEC, subject to conditions similar to those applicable to the CEC. The proposed RPO also incorporates IPO provisions relating to access to protected materials by “CAISO reviewing representatives.”

Apart from these provisions, the Moving Parties essentially ask that resolution of issues pertaining to the confidentiality of RAR data submitted by LSEs be deferred to R.05-06-040, the Commission's generic rulemaking on confidentiality issues.³ This approach is consistent with D.05-10-042, which provided for a conservative approach to RAR-related confidentiality issues while R.05-06-040 is pending. I find the proposed RPO is a reasonable approach to broadening availability of LSE data at this time, and I intend to adopt it in significant part. However, I find that certain modifications to the proposed RPO may be warranted, as discussed below. The significant modifications are briefly discussed below; minor revisions and editorial changes are not discussed.

First, I note that the Moving Parties intend for the RPO to serve as the protective order for the then-current RAR phase of R.04-04-003 only, and they have agreed to modifications to the IPO with the express understanding that the RPO will apply only to the 2006 RAR. Since the Commission has ordered that R.05-12-013 is the successor to R.04-04-003 as to RAR, it does not appear to be reasonable to limit the applicability of the RPO to the former proceeding. Instead, I find that the proposed RPO should be recast to be applicable in this new RAR proceeding. Also, limiting the applicability of the RPO to the 2006

³ The Moving Parties note that they reached agreement with regard to the LSE data submittals for 2006, but they have not reached agreement on the confidential issues necessary to develop a permanent protective order. The Moving Parties agreed to defer further discussions concerning the development of a permanent protective order to R.05-06-040. They reserve the right to advocate adoption of terms and provisions for a permanent protective order that differ from the terms and conditions of the proposed RPO. IEP reserves the right to seek broader access to protected materials by representatives of market participating parties, including, access to materials currently provided only to non-market participating parties and staff reviewing representatives, and TURN reserves the right to seek access, at some later point, to the ESP confidential materials used to develop the aggregated data.

RAR could leave a void. For the 2007 RAR compliance cycle, the LSEs' historic load data are due on March 15, 2006 and their preliminary load forecasts are due April 15, 2006. (D.05-10-042, p. 83.) Since it does not appear likely that the first phase of D.05-06-040 will be concluded prior to these RAR filing deadlines, it is reasonable to use this RPO to protect confidential information in these submittals.

The IPO governs access to "load forecasts and data" submitted by respondent LSEs in furtherance of the RAR program. (IPO, Paragraph 1, p. C-1.) The IPO does not clearly cover the LSEs' resource tabulations that will be submitted on January 27, 2006, and the proposed RPO likewise does not appear to do so. In D.05-10-042 the Commission provided that the resource tabulations should be treated as confidential pending the review of procurement related confidentiality issues in R.05-06-040. To give effect to this directive, I find that the proposed RPO should be revised so that it clearly covers the resource tabulations that LSEs will include in their year-ahead compliance filings for 2006. In addition, the RPO should be applicable to the month-ahead RAR compliance filings that commence later this year (at least until such time as procurement-related confidentiality issues addressed in R.05-06-040 are resolved). I am adding wording to Paragraph 1 to accomplish this.

Paragraph 5 of both the IPO and the proposed RPO requires the preparation, service, and in some cases filing of redacted documents. While this requirement is important in the context of litigation, it could be burdensome yet unproductive with respect to routine compliance filings that will be made under the ongoing RAR program. In the extreme case it could require that LSEs circulate blank templates among each other. I will add language to Paragraph 5 to create an exception for compliance filings.

In Paragraph 7 I add a new sub-paragraph to give effect to the Commission's determination in D.05-10-042 that the CEC may disclose certain aggregated data submitted by LSEs. Similar provisions are added in Paragraph 13 (Derivative Materials) respecting the CEC.

In Paragraph 8, the IPO and the proposed RPO require that Reviewing Representatives execute non-disclosure certificates prior to being granted access to protected materials. Advisory staff reports that this requirement creates administrative burdens that can only be expected to grow as full implementation of the RAR program approaches. It appears that as to Staff Reviewing Representatives, imposition of the requirement to execute nondisclosure certificates may be an unnecessary administrative burden. Confidential information is routinely made available to staff at both this agency and the CEC without the need for non-disclosure certificates, and I am not persuaded that it is necessary make an exception to this practice with respect to data submitted pursuant to the RAR program. Accordingly, Paragraph 8 of the draft RPO attached to this ruling adds language providing that Staff Reviewing Representatives need not execute non-disclosure certificates. The Moving Parties' proposal that Staff Reviewing Representatives be pre-identified to parties and provide *curriculum vitae* similarly appears to be unnecessary and administratively burdensome, and therefore is not adopted in the draft RPO.

Paragraph 11a. of the proposed RPO refers to an "Interagency Confidentiality Agreement" in Appendix B of the RPO. However, no such appendix or attachment to the proposed RPO was included with the Joint Motion. Attachment B to the draft RPO appended to this ruling is based on Attachment B to the IPO, and includes revisions consistent with determinations made in this ruling.

Finally, I note that Moving Parties have proposed adding a provision to the IPO indicating that Commission Staff and Staff Reviewing Representatives are subject to potential penalties under Section 2112 in the event of improper disclosure of Protected Information provided by entities other than Public Utilities. Subject to further review of the need for and appropriateness of such a provision, at this time I am not persuaded that the proposal should be adopted. The attached draft RPO deletes Moving Parties' proposed revision to the last sentence of Paragraph 1. Moving Parties and other parties may address the need for this provision in their comments.

Since I am proposing to revise the RPO proposed by Moving Parties, I will provide an opportunity for comments as set forth below.

IT IS RULED that:

1. Comments on the draft Revised Protective Order (RPO) (Appendix A) may be filed in accordance with the foregoing discussion. Comments are due January 23, 2006. Replies are not to be filed. Comments shall be filed in this docket and not in Rulemaking 04-04-003.

2. The August 31, 2005 Joint Motion provided notice that the Interim Protective Order (IPO) may be revised with the adoption of the proposed RPO. This ruling constitutes notice that the IPO and the proposed RPO may be further revised, and provides opportunity to be heard with respect to the proposed revisions.

Dated January 17, 2006, at San Francisco, California.

/s/ MARK S. WETZELL
Mark S. Wetzell
Administrative Law Judge

Appendix A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Refinements to and Further Development of the
Commission's Resource Adequacy
Requirements Program.

Rulemaking 05-12-013
(Filed December 15, 2005)

DRAFT

**REVISED PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF
MARKET SENSITIVE LOAD AND RESOURCE DATA AND INFORMATION**

1. Scope

This Revised Protective Order ("Protective Order") shall govern access to and the use of Protected Materials, as hereinafter defined, submitted by any respondent to Rulemaking 04-04-003 and Rulemaking 05-12-013 pursuant to any ruling or order of the Assigned Administrative Law Judge ("Assigned ALJ"), the Law and Motion Administrative Law Judge ("Law and Motion ALJ"), the Assigned Commissioner, or the California Public Utilities Commission ("CPUC" or "Commission") that requires such respondents to submit load forecasts, resource tabulations, or other data in furtherance of the Commission's development, establishment, implementation, and operation of a program of Resource Adequacy Requirements. This Protective Order does not address the right of employees of the Commission acting in their official capacities ("Commission Staff") to view Protected Materials to the extent that Commission Staff is entitled to view Protected Materials subject to the provisions of Section 583 of the Public Utilities Code and/or the Commission's General Order 66-C; however, improper disclosure by Commission Staff or Staff Reviewing

Representatives, of Protected Materials provided by entities other than public utilities constitutes a violation of this Protective Order.

2. Modification

This Protective Order shall remain in effect until and unless it is replaced by a new protective order adopted by the Assigned ALJ, the Law and Motion ALJ, the Assigned Commissioner, or the Commission after all affected parties have been given notice and have had a reasonable opportunity to be heard.

3. Definitions

a. The term "Protected Material(s)" means (i) trade secret or other confidential and/or proprietary information whose market sensitive nature, as determined in good faith by the Disclosing Party, is such that unrestricted disclosure and use would cause the Disclosing Party or ratepayers significant harm or loss of an opportunity to obtain a competitive advantage, and (ii) any other materials that are made subject to this Protective Order by any Assigned ALJ, Law and Motion ALJ, Assigned Commissioner, the Commission, or any court or other body having appropriate authority. Protected Materials also includes memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, or compiles other Protected Materials or from which such materials may be derived. Protected Materials do not include: (i) any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court, unless such information or document has been determined to be protected by such agency or court; or (ii) any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Order, any other protective order or Section 583 of the Public Utilities Code.

To the extent that the Commission, the California Energy Commission (CEC), the Federal Energy Regulatory Commission, or any court or agency with jurisdiction determines that data covered by this Protective Order are public information, and such determination is no longer subject to administrative or judicial review, such data shall cease to be Protected Materials.

b. The term “redacted” refers to situations in which Protected Materials in a document, whether the document is in paper or electronic form, have been covered, blocked out, or removed. The term “unredacted” refers to situations in which the Protected Materials in a document, whether in paper or electronic form, have not been covered, blocked out, or removed.

c. The term “Disclosing Party” means a party who initially provides any materials specified as Protected Materials in this proceeding.

d. The term “Resource Adequacy Requirements” means the regulatory program governing certain load-serving entities established pursuant to Commission Decision (D.) 04-10-050, D.04-10-035, and D.05-10-042, and being developed and implemented in Commission Rulemaking 04-04-003 and Rulemaking 05-12-013.

e. The term “Reviewing Representative” refers to an NMPP Reviewing Representative, a Staff Reviewing Representative, and an ISO Reviewing Representative.

f. The term “Market Participating Party” (“MPP”) refers to a party that is: (i) a person or entity that engages in the purchase, sale or marketing of electrical energy or capacity or natural gas, or the bidding on or purchasing of power plants, or consulting on such matters; or (ii) a trade association or other organization composed of or representing persons or entities that engage in one or more of such activities.

g. The term “Non-Market Participating Party,” or “NMPP,” refers to a party that is not an MPP as defined in Paragraph 3(f) hereof.

h. The term “NMPP Reviewing Representative” refers to a person an NMPP selects pursuant to Paragraph 6 hereof who is an employee of the NMPP or an attorney or an expert the NMPP retains for the purpose of preparing for, participating in, or giving advice concerning this proceeding.

i. The term “ISO Reviewing Representative” refers to a person employed and selected pursuant to Paragraph 6 hereof by the California Independent System Operator Corporation (“ISO”), a nonprofit public benefit corporation created pursuant to Article 3, Chapter 2.3 of the Public Utilities Act (Public Utilities Code Sections 345, et seq.).

j. The term “Staff Reviewing Representative” refers to a person who is an employee or contractor of the Commission and, provided that an interagency agreement has been executed pursuant to Paragraph 11 a hereof, a person who is an employee or contractor of the CEC, or another state governmental agency that is statutorily authorized to obtain access to confidential data held by another state governmental agency, upon execution of a written agreement to treat the data so obtained as confidential as provided in Government Code Section 6254.5(e) and Paragraph 11 a of this Protective Order.

4. Designation of Materials

a. When filing or providing any documents containing Protected Materials, a party shall physically mark such documents on each page (or in the case of non-documentary materials such as computer diskettes, on each item) as “PROTECTED MATERIALS SUBJECT TO PROTECTIVE ORDER,” or with words of similar import as long as one or more of the terms, “Protected Materials,” “Protective Order,” “Section 583,” or “General Order No. 66-C” is

included in the designation to indicate that the materials in question are protected. Each page shall be numbered by "Bates Stamp" or equivalent method.

b. All materials so designated shall be treated as Protected Materials unless and until (a) the designation is withdrawn pursuant to Paragraph 17 hereof, or (b) there is a determination pursuant to Paragraph 14 hereof changing the designation and a period of 14 calendar days has elapsed without an appeal or other challenge to the determination pending.

c. All documents containing Protected Materials that are filed with or provided to the Commission or served shall be placed in sealed envelopes or otherwise appropriately protected and shall be endorsed to the effect that they are filed, provided or served under seal pursuant to this Protective Order. Such documents shall be served upon Reviewing Representatives and persons employed by or working on behalf of the state governmental agencies referred to in Paragraph 11(b) hereof who are eligible and have requested to review such materials. Service upon the persons specified in the foregoing sentence may either be (a) by electronic mail in accordance with the Electronic Service Protocols established for this docket, (b) by facsimile, or (c) by overnight mail or messenger service. Whenever service of a document containing Protected Materials is made by overnight mail or messenger service, the Assigned ALJ shall be served with such document by hand on the date that service is due.

5. Redaction of Documents

Whenever a party files or provides in discovery a document that includes Protected Materials (including but not limited to briefs, testimony, exhibits, and responses to data requests), such party shall also prepare a redacted version of such document. The redacted version shall enable persons familiar with this

proceeding to determine with reasonable certainty the nature (but not magnitude) of the data that has been redacted and where the redactions occurred. The redacted version of a document to be filed shall be served on all persons on the service list, and the redacted version of a discovery document shall be served on all persons entitled thereto. These requirements to prepare, serve, and, as applicable, file redacted documents shall not apply to compliance filings, including load forecasts and data and resource tabulations, submitted by respondent load-serving entities pursuant to Decision 05-10-042 or any decision of the Commission in R.05-10-042, ruling of the Assigned Commissioner or Administrative Law Judge, or directive of the Energy Division Director or his designee.

6. Selection of Reviewing Representatives

Each NMPP shall be entitled to select employees, attorneys, and experts to serve as its NMPP Reviewing Representatives. The ISO shall be entitled to select employees to serve as its ISO Reviewing Representatives. The Commission shall be entitled to select employees and contractors to serve as its Staff Reviewing Representatives. The CEC shall be entitled to select employees and contractors to serve as its Staff Reviewing Representatives. Each party selecting an NMPP Reviewing Representative or an ISO Reviewing Representative shall first identify its proposed Reviewing Representative to all other parties and the Division Director and shall provide all parties with a curriculum vitae of each candidate, including a brief description of the candidate's professional experience and past and present professional affiliations for the last 10 years. Any party who objects to a proposed Reviewing Representative shall advise the proposing party in writing within five (5) business days from receipt of such notice, setting forth in detail the reasons there for. In the event of such objection, the proposing party,

the objecting party or parties, and the Division Director shall promptly meet and confer to try to resolve the issue, and if necessary seek a ruling from either the Assigned ALJ or the Law and Motion ALJ. In ruling on the motion, the Assigned ALJ or the Law and Motion ALJ shall consider all relevant facts, including whether the proposed Reviewing Representative has a need to know the information in the Protected Materials to prove or defend against a material element of one or more issues presented in this proceeding, and whether it is reasonable to conclude that the information sought by the Reviewing Representative is essential to a fair resolution of an issue in this proceeding.

7. Access to Protected Materials and Use of Protected Materials

a. Subject to the terms of this Protective Order, Reviewing Representatives shall be entitled to access to Protected Materials provided by public utilities, except that the Disclosing Parties may redact price information from Protected Materials made available to ISO Reviewing Representatives and except that Staff Reviewing Representatives may have access to Electric Service Provider (“ESP”) Protected Materials. Notwithstanding any other provision of this Protective Order, access for parties other than Staff Reviewing Representatives to information submitted by an ESP shall be limited to a public aggregation of all ESP data to be compiled by the Commission’s Energy Division or the staff of the California Energy Commission, and the original Protected Material submissions by ESPs shall be held in confidence by the Commission and the California Energy Commission.

b. All other parties in this proceeding shall not be granted access to Protected Materials, but shall instead be limited to reviewing redacted versions of documents or information aggregated in such a manner as to ensure that no

Protected Materials are disclosed or capable of being “reverse engineered” from that aggregated data to create any Protected Materials.

c. Reviewing Representatives shall use Protected Materials solely for purposes of Rulemaking 04-04-003 and Rulemaking 05-12-013, and, after these proceedings are closed, for purposes of the Resource Adequacy Requirements program being established and implemented in these proceedings. If a Reviewing Representative's scope of present or future employment includes the marketing of energy, the direct supervision of any employee or employees whose duties include the marketing of energy, the provision of consulting services to any person whose duties include the marketing of energy, or the direct supervision of any employee or employees whose duties include the marketing of energy, such Reviewing Representative may not use or disclose information contained in any Protected Materials obtained through this proceeding, except while employed by a Reviewing Representative in the task of other than for purposes the of development, establishment, implementation, and operation of a program of Resource Adequacy Requirements.

d. Notwithstanding any other provision of this Paragraph, with respect to an ISO Reviewing Representative only, participation in the ISO's ordinary operation of the ISO controlled grid and in its ordinary administration of the ISO administered markets, including markets for ancillary services, supplemental energy, congestion management, and local area reliability services, shall not be deemed to be a violation of this Protective Order.

e. Pursuant to D.05-10-042, Staff of the California Energy Commission may use Protected Materials submitted by LSEs pursuant to resource adequacy compliance filings in assessments of supply-demand balances and in preparation of public documents describing the adequacy of California's electricity system.

Commission confidentiality designations will be maintained by the CEC in making such assessments, and the CEC will not publish any assessment that directly reveals the data or allows the data submitted by an individual LSE to be “reverse engineered.”

8. Non-Disclosure Certificates

A Reviewing Representative other than a Staff Reviewing Representative shall not inspect, participate in discussions regarding, or otherwise be granted access to, Protected Materials unless and until he or she has first completed and executed a Non-Disclosure Certificate, attached hereto as Attachment A, and delivered the original, signed Non-Disclosure Certificate to the Disclosing Party. The Disclosing Party shall retain the executed Non-Disclosure Certificates pertaining to the Protected Materials it has disclosed and shall promptly provide copies of the Non-Disclosure Certificates to Commission Staff upon request.

9. Maintaining Confidentiality of Protected Materials

Each Reviewing Representative shall treat Protected Materials as confidential in accordance with this Protective Order and, as applicable, the Non-Disclosure Certificate executed pursuant to Paragraph 8 hereof. Except as provided in Paragraph 7.e., Protected Materials shall not be used except as necessary for the conduct of this proceeding and for the ongoing operation of the RAR program being established and implemented in Rulemaking 04-04-003 and Rulemaking 05-12-013, and shall not be disclosed in any manner to any person except (i) NMPP Reviewing Representatives; (ii) Reviewing Representatives’ paralegal employees and administrative personnel, such as clerks, secretaries, and word processors, to the extent necessary to assist the Reviewing Representatives, provided that they shall first assure that such personnel are familiar with the terms of this Protective Order, (iii) persons employed by or

working on behalf of the state governmental agencies covered by Paragraph 11(b), (iv) ISO Reviewing Representatives (with the exception of price information), and (v) Staff Reviewing Representatives. Reviewing Representatives shall adopt suitable measures to maintain the confidentiality of Protected Materials they have obtained pursuant to this Protective Order, including by maintaining such materials in locked file cabinets and implementing password protection for computer files. Reviewing Representatives shall not leave such materials unattended on desks or tables or on computer screens. Reviewing Representatives shall be liable for any unauthorized disclosure or use by their paralegal employees or administrative staff. In the event any Reviewing Representative is requested or required by applicable laws or regulations, or in the course of administrative or judicial proceedings (in response to oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any of Protected Materials, the Reviewing Representative shall oppose disclosure on the grounds that the requested information has already been designated by the Commission as Protected Materials subject to this Protective Order lawfully issued by the Commission and therefore may not be disclosed. The Reviewing Representative shall also immediately inform the Disclosing Party of the request, and such party may, at its sole discretion and cost, direct any challenge or defense against the disclosure requirement, and the Reviewing Representative shall cooperate with such party to the maximum extent practicable either to oppose the disclosure of the Protected Materials consistent with applicable law, or to obtain confidential treatment of them by the person or entity who wishes to receive them prior to any such disclosure. If, notwithstanding such opposition, the Reviewing Representative is ordered by a

court of competent jurisdiction to disclose any Protected Materials, such disclosure shall not constitute a violation of this Protective Order. If there are multiple requests for substantially similar Protected Materials in the same case or proceeding where a Reviewing Representative has been ordered to produce certain specific Protected Materials, the Reviewing Representative may, upon request for substantially similar materials by another person or entity, respond in a manner consistent with that order to those substantially similar requests.

10. Return or Destruction of Protected Materials

Within thirty (30) days after a Reviewing Representative other than a Staff Reviewing Representative completes or terminates his or her services in this proceeding or within thirty (30) days after this proceeding is concluded and no longer subject to appellate review, whichever occurs first, each Reviewing Representative shall, at his or her option, return to the Disclosing Party or destroy the Protected Materials obtained, produced or maintained pursuant to this Protective Order. Within the same 30-day period, the Reviewing Representatives shall submit to the Disclosing Party an original signed affidavit or declaration under penalty of perjury under the laws of the State of California stating that, to the best of his or her knowledge, all Protected Materials subject to this paragraph have been returned to the Disclosing Party or destroyed. To the extent any Protected Materials are not returned or destroyed pursuant to this paragraph for any reason, they shall remain subject to this Protective Order, Section 583 of the California Public Utilities Code and/or CPUC General Order No. 66-C as applicable. In the event that a Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged to provide services in this proceeding, then access to such materials by that person shall be terminated. Even if no longer engaged in such reviews, every such person shall continue to

be bound by the provisions of this Protective Order and, as applicable, the Non-Disclosure Certificate.

11. Access by Governmental Entities

a. The CPUC shall release Protected Materials to the CEC upon receipt from the CEC of an executed Interagency Confidentiality Agreement (“Interagency Confidentiality Agreement”) identical in form to the agreement set forth in Attachment B hereto. Such Interagency Confidentiality Agreement shall (i) provide that the CEC will treat the requested Protected Materials as confidential in accordance with this Protective Order, (ii) be signed by a person authorized to bind the CEC contractually, and (iii) expressly state that furnishing of the requested Protected Materials to employees or representatives of the CEC does not, by itself, make such Protected Materials public. In addition, the Interagency Confidentiality Agreement shall include an express acknowledgment of the CPUC’s sole authority (subject to judicial review) to make the determination whether the Protected Materials should remain confidential or be disclosed to the public, notwithstanding any provision to the contrary in the statutes or regulations applicable to the CEC.

b. In the event the CPUC receives a request for a copy of or access to a party’s Protected Materials from a state governmental agency other than the CEC that is authorized to enter into a written agreement sufficient to satisfy the requirements for maintaining confidentiality set forth in Government Code Section 6254.5(e), the CPUC may, not less than five (5) days after giving written notice to the Disclosing Party of the request, release such protected material to the requesting governmental agency, upon receiving from the requesting agency an executed Interagency Confidentiality Agreement that contains the same provisions described in Paragraph 11(a) above, and that is otherwise

substantively identical to the draft agreement set forth in Attachment B; i.e., identical as to legal principles but with variations in language that are necessary due to the particular situation of the requesting agency.

12. PRA Requests

If a request is made pursuant to the Public Records Act ("PRA"), Government Code §6250, et seq., that a party's Protected Materials filed with or otherwise in the possession of the CPUC be produced, the CPUC will notify such party of the PRA request. The CPUC also will notify the requester that the Protected Materials are public records that have been filed with or submitted to the CPUC accompanied by a claim that they fall within the exclusions listed in Section 2 of General Order No. 66-C or other specific exclusions provided by the PRA, and/or that there is a public interest served by withholding the records. The CPUC will thereafter proceed to determine, pursuant to General Order No. 66-C, whether the requested Protected Materials are excluded from public inspection. In the event the CPUC receives a request from a federal government agency or via a judicial subpoena for the production of a party's Protected Materials in the CPUC's possession, the CPUC will also notify the Disclosing Party of such request. In the event that a PRA requester brings suit to compel disclosure of a party's Protected Materials, the CPUC will promptly notify the Disclosing Party of such suit, and Commission Staff and the Disclosing Party shall cooperate in opposing the suit.

13. Derivative Materials

There shall be a rebuttable presumption that (a) any study that incorporates, describes or otherwise employs Protected Materials in a manner that could reveal all or a part of such materials, or (b) any model that relies upon Protected Materials for algorithms or other computation(s) critical to the

functioning of the model, are Protected Materials that are subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, or this Protective Order. However, models that merely use Protected Materials as inputs will not themselves be considered Protected Materials. There shall also be a rebuttable presumption that where the inputs to studies or models include Protected Materials, or where the outputs of such studies or models reveal such inputs or can be processed to reveal such materials, such inputs and/or outputs shall be considered Protected Materials subject to this Protective Order, unless such inputs and/or outputs have been redacted or aggregated to the satisfaction of the Disclosing Party or, in the case of the CEC, to extent that the data cannot be "reverse engineered." Unless a party other than the CEC, by means of notice and motion, obtains a ruling from the Assigned ALJ or the Law and Motion ALJ holding that the applicable presumption(s) from among the foregoing has been rebutted with respect to the model or study at issue, then any party who devises or propounds a model or study that incorporates, uses or is based upon such materials shall label the model or study "Protected Materials," and it shall be subject to the terms of this Protective Order.

14. Dispute Resolution

All disputes arising under this Protective Order, including but not limited to alleged violations of this Protective Order and disputes concerning whether materials were properly designated as Protected Materials, shall be presented for resolution to the Assigned ALJ or the Law and Motion ALJ. Prior to presenting any such dispute to the applicable ALJ, the parties to the dispute shall use their best efforts to resolve it. The parties and Commission Staff reserve the right to seek additional administrative or judicial remedies after the Assigned ALJ or the Law and Motion ALJ has made a ruling regarding the dispute.

15. Other Objections to Use or Disclosure

Nothing in this Protective Order shall be construed as limiting the right of a party, the Commission Staff, or a state governmental agency covered by Paragraphs 11(a) or 11(b) from objecting to the use or disclosure of Protected Material on any legal ground, such as relevance or privilege.

16. Remedies

Any violation of this Protective Order shall constitute a violation of an order of the CPUC. Notwithstanding the foregoing, the parties and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials.

17. Withdrawal of Designation

A Disclosing Party may agree at any time to remove the "Protected Materials" designation from any materials of such party if, in its opinion, confidentiality protection is no longer required. In such a case, the Disclosing Party will notify all other parties that the Disclosing Party believes are in possession of such materials of the change of designation.

18. Interpretation

Titles are for convenience only and may not be used to restrict the scope of this Protective Order.

Mark S. Wetzell
Administrative Law Judge

Dated: January 17, 2006

ATTACHMENT A TO REVISED PROTECTIVE ORDER

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Refinements to and Further Development of the
Commission's Resource Adequacy
Requirements Program.

Rulemaking 05-12-013
(Filed December 15, 2005)

NON-DISCLOSURE CERTIFICATE

I, _____, have been asked by _____
to inspect certain materials that have been designated as "Protected Materials"
under Paragraph 4 of the Protective Order entered in the above-captioned matter
by the Administrative Law Judge by order dated _____.

1. I hereby certify my understanding that access to Protected Materials is
provided to me pursuant to the terms and restrictions of the Protective Order in
this proceeding, that I have been given a copy of and have read the Protective
Order, and that I agree to be bound by it. I understand that the contents of the
Protected Materials, any notes or other memoranda, or any other form of
information that copies, is derivative of or otherwise discloses such Protected
Materials shall not be disclosed to anyone other than in accordance with the
Protective Order.

2. I understand that my review of Protected Materials is solely for the
purpose of participating in the above-captioned matter and establishing and
implementing the RAR program adopted in the proceeding, and that any other
use or disclosure of such materials by me is a violation of the Protective Order.

3. I hereby agree that if the scope of my present or future employment
includes the marketing of energy, the direct supervision of any employee or
employees whose duties include the marketing of energy, the provision of
consulting services to any person whose duties include the marketing of energy,
or the direct supervision of any employee or employees whose duties include the
marketing of energy, I will not use or disclose information contained in any
Protected Materials obtained through this proceeding, except while employed by
a Reviewing Representative in the task of other than for purposes the of

development, establishment, implementation, and operation of a program of Resource Adequacy Requirements.

I acknowledge that using or disclosing information contained in any Protected Materials in violation of the preceding paragraph constitutes a violation of the Protective Order. Notwithstanding any other provision of this paragraph, with respect to an ISO Reviewing Representative only, participation in the ISO's ordinary operation of the ISO-controlled grid and in its ordinary administration of the ISO administered markets, including markets for ancillary services, supplemental energy, congestion management, and local area reliability services, shall not be deemed to be a violation of this paragraph or the Protective Order.

4. I hereby agree to submit to the jurisdiction of the California Public Utilities Commission ("CPUC") for the enforcement of the undertakings I have made hereby and I waive any objection to venue laid with the Commission for enforcement of the order.

5. I acknowledge that any violation of the Protective Order shall constitute a violation of an order of the CPUC and that the parties to this proceeding and Commission Staff reserve their rights to pursue any legal or equitable remedies that may be available in the event of an actual or anticipated disclosure of Protected Materials, including misdemeanor violation under Public Utilities Code § 2112.

Dated: _____

BY: _____

TITLE: _____

REPRESENTING: _____

ATTACHMENT B TO REVISED PROTECTIVE ORDER

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider
Refinements to and Further Development of the
Commission's Resource Adequacy
Requirements Program.

Rulemaking 05-12-013
(Filed December 15, 2005)

**CONFIDENTIALITY AGREEMENT BETWEEN THE CALIFORNIA PUBLIC
UTILITIES COMMISSION AND THE CALIFORNIA ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

A. PURPOSE

In connection with the development, establishment, and implementation of a program of Resource Adequacy Requirements in this proceeding, The California Energy Resources Conservation and Development Commission ("CEC") will review, analyze, compile, and adjust load forecasts and data and qualifying resource data submitted to the California Public Utilities Commission ("Commission") by load-serving entities (LSEs) pursuant to order of the Assigned Administrative Law Judge, the Assigned Commissioner, or the Commission. The CEC agrees to keep this information confidential in its entirety, disclosing it only to its employees and contractors whose work requires them to review and analyze such data.

B. CONFIDENTIALITY AGREEMENT

This agreement is limited to records that are not open to public inspection, that are in the possession and control of the Commission, and that are identified above.

The Commission shall permit the CEC to review and copy the records identified above that are not open to public inspection ("protected materials," or, hereinafter, "confidential records"), upon the representation of the Executive Director of the CEC that the confidentiality of such records will be maintained

and that they will not be made available for inspection by any other governmental agency, or by the public, except as provided for herein.

The CEC agrees that the confidential records identified above shall be released only to persons who are authorized in writing by the Executive Director of the CEC to obtain the confidential records and, to the extent applicable, who have executed a nondisclosure certificate in accordance with the Protective Order making reference hereto, and that the CEC will ensure that each of its employees and contractors who have access to the confidential records is informed that they are subject to the requirements of this confidentiality agreement.

The CEC shall take reasonable security precautions to keep confidential the records provided to the CEC pursuant to this agreement. The CEC shall notify the Commission immediately upon the discovery of any unauthorized use or disclosure of the confidential records or of any other breach of this agreement, and will cooperate in every reasonable way to help the Commission prevent further unauthorized disclosure or use of the confidential records covered by this agreement.

The Commission reserves its authority under Section 583 of the California Public Utilities Code and General Order 66-C to consider and determine whether the records identified above should be made available for public inspection. The CEC agrees that its Executive Director will not exercise his authority under California Code of Regulations, title 20, section 2507(e), and will not release any confidential records or other documents designated as confidential by the CPUC in R.04-04-003 and R.05-12-013 unless explicitly authorized by the CPUC or ordered by a court of competent jurisdiction.

In the event the CEC determines for any reason that it is required, or that it would be desirable, to disclose or make available the contents of the confidential records identified above to other governmental agencies or to the public, the CEC agrees not to do so without first notifying the Commission of its intent and the reason for the requested disclosure. The CEC further agrees that such notice shall be given no less than 20 days prior to the planned disclosure in order that the Commission, the Assigned Commissioner for R.04-04-003 and R.05-12-013, the Assigned Administrative Law Judge (ALJ) for those proceedings or the Law and Motion ALJ, as the case may be, can give adequate consideration, in accordance with Section 583 of the Public Utilities Code and the Commission's General order 66-C, to the issue of whether it is in the public interest to make such records available to other governmental agencies or to the public. The CEC agrees to abide by the determination of the Commission, the Assigned Commissioner or the applicable ALJ on this issue, but may appeal such determination pursuant to the CPUC's Rules of Practice and Procedure.

With respect to the use of data by the CEC contained in the confidential records subject to this agreement ("confidential data"), it shall be a rebuttable presumption that (i) any study that incorporates, describes or otherwise employs such confidential data in a manner that could reveal all or part of the confidential data, or (ii) any model that relies upon such confidential data for algorithms or other computation(s) critical to the functioning of the model, shall also be considered a confidential record subject to Section 583 of the Public Utilities Code, the Commission's General Order 66-C, and this agreement. However, models that merely use confidential data as inputs will not themselves be considered such confidential records. It shall also be a rebuttable presumption that where the inputs to studies or models include confidential data, or where the outputs of such studies or models reveal the inputs or can be processed to reveal the confidential data, such inputs and/or outputs shall be considered confidential records subject to this agreement, unless such inputs and/or outputs have been redacted or aggregated to the extent that the data cannot be "reverse engineered". Any disputes concerning the appropriate scope of redaction or aggregation that the CEC and the party producing the confidential records cannot resolve shall be presented for resolution to the Assigned ALJ for R.04-04-003 and R.05-12-013 or to the Law and Motion ALJ.

This Agreement shall continue in effect unless or until either of the undersigned parties determines that the agreement should be terminated. Unless otherwise provided for by the written agreement of both the CEC and the Commission, unilateral termination of this agreement shall be effected no sooner than 30 days from the date that either party provides notice, in writing, of its intent to terminate this agreement. All obligations created by this agreement during its term shall survive termination of the agreement.

This agreement shall not be modified except by a written agreement dated subsequent to the date of this agreement and signed by authorized representatives of both parties. None of the provisions of this agreement shall be deemed to have been waived by any act or acquiescence on the part of either party, its agents, or employees, but only by an instrument in writing signed by an authorized representative of the party. No waiver of any provisions of this agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

If any provision of this agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Name_____

Name_____

Executive Director, California
Energy Commission

General Counsel, California
Public Utilities Commission

Dated:_____

Dated:_____

(End of Appendix A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Revised Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated January 17, 2006, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.